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LAW OFFICES OF
LOUIS E. GITOMER, LLC.

LOUIS E. GITOMER
Lou@lgraillaw.com

MELANIE B. YASBIN
Melanie@lgraillaw.com
410-296-2225

600 BALTIMORE AVENUE, SUITE 301
TOWSON, MARYLAND 21204-4022
(410) 296-2250 • (202) 466-6532
FAX (410) 332-0885

February 17, 2012

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

RE: Docket No. 42129, *American Chemistry Council, The Chlorine Institute, Inc., The Fertilizer Institute, and PPG Industries, Inc. v. Alabama Gulf Coast Railway LLC and RailAmerica, Inc.*

Dear Ms. Brown:

The Alabama Gulf Coast Railway LLC and RailAmerica, Inc. ("Defendants") do not object to Complainants February 13, 2012 letter (the "Letter") inquiring about the status of an injunction request pending before the Surface Transportation Board (the "Board"). However, Defendants do object to Complainants misuse of a status inquiry as the platform to reargue the merits of the injunction and for inserting a new issue into their injunction request. It is most important to note that Complainants still have not demonstrated irreparable harm, an indispensable factor in obtaining an injunction, and that mere monetary losses are not irreparable harm. *See The New York, Susquehanna and Western Railway Corporation—Discontinuance of Service Exemption -in Broome and Chenango Counties, NY*, STB Docket No. AB-286 (Sub-No. 5X), slip op. at 2 (STB served September 30, 2008); *Saginaw Bay Southern Railway Company—Acquisition and Operation Exemption—Rail Line of CSX Transportation, Inc.*, STB Finance Docket No. 34729, slip op. at 3 (STB served May 5, 2006).

The basis for Complainants' argument (Letter at 2) appears to be a purported new position by Defendants in our opening evidence filed on January 12, 2012 in Finance Docket No. 35517, *CF Industries, Inc. v. Indiana & Ohio Railway Company, Point Comfort and Northern Railway Company, and Michigan Shore Railroad, Inc.* The inaccurately alleged new evidence is a statement that in challenging rates "Complainants must file a rate reasonableness complaint." Complainants seem to act as if this was the first time rate reasonableness issue was raised in this proceeding and that therefore they are entitled to an injunction. Complainants are wrong. Not only are Complainants factually wrong, but they still fail to meet the criteria for obtaining an injunction. There is nothing in the Letter that was not available to Complainants when they filed their supplement to their injunction request on October 31, 2011. Complainants are seeking to espouse a new theory for the injunction in their third bite at the apple.

Everything that Complainants argued on February 13, 2012, was available to them on October 31, 2011. Firstly, the Fuel Surcharge decision was served on August 3, 2006. Secondly, Tariff AGR-0900-01 was effective April 29, 2011. And, thirdly, Defendants stated "that 'substantial additional costs' are not appropriate considerations in an unreasonable practice proceeding and instead should be addressed in an unreasonable rate proceeding" in the Response to Motion for Injunctive Relief under 49 U.S.C. §721(b)(4) filed on May 9, 2011, page 9, footnote 8.

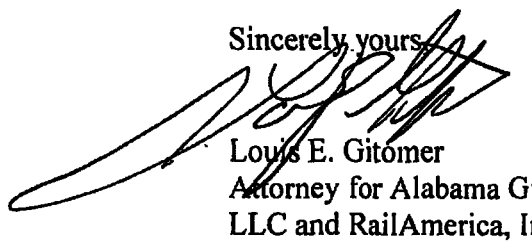
Instead of complying with the Board's decision of September 30, 2011, Complainants have decided to argue about the fuel surcharge rules in a status letter. In order to make the argument, Complainants create an elaborate, illogical and unreasonable argument that Defendants have never made in any filing or otherwise, and then Complainants proceed to attack their own made up argument. Essentially, Complainants claim that instead of creating a separate rate for a priority train, that Defendants should merely have imposed a surcharge on something. Complainants never explain the rate that was to be surcharged and never explain why a railroad is not entitled to issue a rate for a separate operation. Clearly a fuel surcharge must be applied to a specific train. It can't be applied to anything else, or at least to date, no one has created a transportation related activity other than a train to apply a fuel surcharge to. Defendants are not applying an add-on to an existing train. Defendants have added a new train in order to better comply with Federal Railroad Administration regulations and priced it accordingly.

The "position taken by Defendants in their opening evidence" (Letter at 2) does not reinforce the need for an injunction. That statement merely reiterated Defendants earlier statement. Complainants fail to justify their untimely filing by claiming a statement made by Defendants on January 17, 2012 is new, when Defendants made the same statement on May 9, 2011. At a minimum, Defendants contend that the Board should strike the contents of the Letter after the first sentence.

Even if the Board accepts the Letter into the record, Complainants, even with their new theory, have failed to meet the criteria to justify an injunction because they have not shown that they will prevail on the merits or that they will suffer irreparable harm. Defendants respectfully renew their request the Board deny the Motion for Injunctive Relief as supplemented.

Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer
Attorney for Alabama Gulf Coast Railway LLC and RailAmerica, Inc.

Cc: Mr. Moreno
Mr. Donovan